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May 18, 2015

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From: Sachi A. Hamai
Interim Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains reports on the following:

- **Pursuit of County Position on Legislation**
 - **Pursuit of County Position to Oppose SB 563 (Pan).** This measure would restrict the utilization review process when future medical care is awarded in the final award by the Workers' Compensation Appeals Board, the request for medical treatment is specified on the final award, and the medical treatment is evidence based. Therefore, unless otherwise directed by the Board, and consistent with existing policy to oppose legislation that erodes reforms accomplished by the FY 2003-04 and FY 2011-12 workers' compensation reform legislation, **the Sacramento advocates will oppose SB 563.**
- **Status of County-Advocacy Legislation**
 - **County-supported SB 277 (Pan and Allen)** – related to the repeal of the personal belief exemption for immunizations of school-aged children, passed the Senate Floor on May 14, 2015.

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Pursuit of County Position on Legislation

SB 563 (Pan), which as amended on April 30, 2015, would restrict the utilization review process when future medical care is awarded in the final award by the Workers' Compensation Appeals Board, the request for medical treatment is specified on the final award, and the medical treatment is evidence based.

Under current law, when an employee is injured on the job, an employer can approve the treatment prescribed by the employee's physician or it must refer the claim to a Utilization Review (UR), a third party administrator responsible for determining if the requested medical treatment is effective and safe based on evidence based medical guidelines established by the State. Generally, a UR involves an initial review by a non-physician with higher-level reviews conducted by a physician or team of physicians. Only the UR physician can modify, delay, or deny a request for medical treatment; in these cases, the employee can contest the decision by requesting an Independent Medical Review (IMR) from the State. The UR and IMR are established in existing law and are subject to performance audit by the State and penalties for noncompliance.

SB 563 proposes to change the current process for medical treatment requests on cases where an award for future medical care for the effects of the injury has been included by the Workers' Compensation Appeals Board in a final award for permanent disability. In such cases, SB 563 provides that the UR/IMR can only be used when the requested treatment may not be evidence based medicine or may not be related to the effects of the injury. Further, SB 563 would require an additional medical examination following an IMR to confirm the IMR determination and subjects the findings of that examination to litigation before the Workers' Compensation Appeals Board. Thus, SB 563 would impose two additional costly and time-consuming steps before a treatment request can be altered or denied, even if ultimately the treatment is determined to be inappropriate or potentially harmful to the injured employee.

The Chief Executive Office – Risk Management Branch (CEO-RMB) reports that in many situations, SB 563 would undermine the mechanism for evaluating if a physician's treatment recommendations are consistent with scientifically proven and evidence based medical care protocols, thereby, allowing those treatment recommendations to stand without question as to its appropriateness in the future. This measure would erode the UR process that was established in statute to promote cost effective workers' compensation medical care and provide relief to the State from the effects of the workers' compensation crises experienced in the early 2000s.

Moreover, the Chief Executive Office – Risk Management Branch indicates that SB 563 would establish impractical and costly requirements that must be met prior to modifying,

delaying, or denying the medical treatment prescribed by a workers' compensation physician. Such requirements would include an expedited utilization review, independent medical review, medical-legal examination, and legal proceedings to stipulate new medical treatment protocols. According to CEO-RMB, meeting these requirements would increase system loss adjustment costs. For example, the cost of contesting questionable opioid or compound medication requests can result in thousands of dollars per claim. The CEO-RMB and County Counsel note that it could take over a year before the contested treatment issue is ready to be presented to the Workers' Compensation Appeals Board, as a result of long delays for hearings. During this period, the medication and treatment would have to be authorized and paid for by the employer.

The CEO-RMB and County Counsel further note that SB 563 would erode the utilization review process that was established by the FY 2003-04 workers' compensation legislative reform to promote evidence based and cost effective medical care in the workers' compensation system. County Counsel advises that awards of future medical treatment can be ambiguous and often undefined because the awards do not specify the nature of future medical care, and the medical reports for appropriate treatment are often vague. County Counsel also reports that SB 563 will result in increased litigation as appeals will be shifted from the UR and IMR processes to the Workers' Compensation Appeals Board, effectively transferring the decision making of medical decisions from physicians to judges. Such litigation will increase system costs and divert judicial resources away from unresolved cases.

This office and County Counsel recommend an oppose position on SB 563. Therefore, unless otherwise directed by the Board, consistent with existing policy to oppose legislation that erodes reforms accomplished by the FY 2003-04 and FY 2011-12 workers' compensation reform legislation, **the Sacramento advocates will oppose SB 563.**

SB 563 is sponsored by the California Medical Association, and is supported by: the California Labor Federation; California Orthopedic Association; and The California Applicants' Attorneys Association. This bill is opposed by the California State Association of Counties (CSAC), CSAC Excess Insurance, California Coalition on Workers' Compensation, Association of California Insurance Companies, and the California Chamber of Commerce, among others.

SB 563 is scheduled for hearing in the Senate Appropriations Committee on May 18, 2015.

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Status of County-Advocacy Legislation

County-supported SB 277 (Pan and Allen), which as amended on May 7, 2015, would repeal the personal belief exemption for immunizations of school-aged children with exceptions for children in a home-based private school or in an independent study program, passed the Senate Floor by a vote of 25 to 11 on May 14, 2015. This measure now proceeds to the Assembly.

We will continue to keep you advised.

SAH:JJ:MR
VE:TOF:gl

c: All Department Heads
Legislative Strategist